

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Joint Application of)
Invenergy Transmission LLC, Invenergy)
Investment Company LLC, Clean Line Energy)
Partners LLC, Grain Belt Express Clean Line) Docket No. 19-GBEE-253-ACQ
LLC, and Grain Belt Express Holding LLC for)
an Order Approving the Acquisition by)
Invenergy Transmission LLC of Grain Belt
Express Clean Line LLC.

**TESTIMONY IN SUPPORT OF
UNANIMOUS SETTLEMENT AGREEMENT
PREPARED BY
KRIS ZADLO
SENIOR VICE PRESIDENT, INVENERGY LLC
ON BEHALF OF JOINT APPLICANTS**

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1 **Q. Please state your name and business address.**

2 A. My name is Kris Zadlo and I am the Senior Vice President, Commercial Analytics,
3 Regulatory Affairs and Transmission for Invenenergy LLC. My business address is One
4 South Wacker Drive, Suite 1800, Chicago, IL 60606.

5 **Q. Are you the same Kris Zadlo who filed Direct Testimony on December 28, 2018 and**
6 **Rebuttal Testimony on April 15, 2019?**

7 A. Yes, I am.

8 **Q. What is the purpose of your testimony?**

9 A. I am testifying on behalf of the Joint Applicants in support of a Settlement Agreement
10 that resolves all of the issues in this proceeding. I will also discuss how the proposed
11 Transaction meets the Merger Standards used by the Kansas Corporation Commission
12 (“Commission” or “KCC”) and how the public interest will be promoted by the
13 Commission’s approval of the Transaction. My testimony will answer the fundamental
14 question as to why approving the Settlement Agreement is in the public interest. The
15 terms of the settlement are outlined in the Unanimous Settlement Agreement filed
16 contemporaneously with this testimony on May 1, 2019. The parties to the Settlement
17 Agreement (also referred to as “Signatories”) are the Joint Applicants, which are
18 Invenenergy Transmission LLC (“Invenenergy Transmission”), on behalf of itself and its
19 parent company Invenenergy Investment Company LLC (together with Invenenergy
20 Transmission, “Invenenergy”), as well as Clean Line Energy Partners LLC (“Clean Line
21 EP”) and its subsidiaries, Grain Belt Express Clean Line LLC (“GBE” or “Grain Belt
22 Express”) and Grain Belt Express Holding LLC (together with Clean Line EP and GBE,
23 “Clean Line”), and the Staff of the Commission (“Staff”). ITC Great Plains, LLC (“ITC

Great Plains”) is not a signatory to the Settlement Agreement but has indicated through counsel that they do not oppose the settlement.

I. Terms of the Settlement Agreement

Q. What are the key provisions of the Settlement Agreement?

A. Subject to the conditions set forth in the Settlement Agreement and below, the Signatories to the Settlement Agreement evaluated the proposed Transaction pursuant to the Commission’s Merger Standards, as most recently confirmed in Docket No. 18-KCPE-095-MER, and agree that, in accordance with those Standards, approval of the Transaction and the adoption of the Settlement Agreement are in the public interest. Subject to the conditions set forth in the Settlement Agreement, the Signatories request that the Commission issue an order that approves the acquisition of GBE by Invenergy Transmission in accordance with the Membership Interest Purchase Agreement.

Q. What are the conditions the Signatories to the Settlement Agreement have agreed to abide by?

A. The Signatories have agreed to the following conditions:

- a. GBE will not install transmission facilities on easement property in Kansas until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of this multi-state transmission project (“Financing Requirement”). To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a time as GBE is prepared to begin to construct electric transmission facilities in Kansas:
 - i. On a confidential basis, equity and loan and/or other debt financing agreements and commitments entered into or obtained by GBE or its parent

company for the purpose of funding GBE's multi-state transmission project that, in the aggregate, provide commitments for the total project cost.

ii. An attestation by an officer of GBE that GBE has not, prior to the date of the attestation, installed transmission facilities on easement property; or a notification that such installation is scheduled to begin on a specified date.

iii. A statement of the total multi-state transmission project cost, broken out by the categories of engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the project; right-of-way acquisition costs; and other costs necessary to complete the project, and certified by an officer of GBE.

iv. A reconciliation statement certified by an officer of GBE showing that (1) the agreements and commitments for funds provided in subsection (i), above, are equal to or greater than the total project cost provided in subsection (iii), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of the project (taking into account any planned refinancing of debt).

b. Within ten (10) years after the Commercial Operation Date, GBE shall undertake, or engage a third-party to undertake, a study to quantify the estimated decommissioning costs of the project, taking into account the remaining useful life of the Project, the cost to remove installed facilities, and the salvage value of those facilities. Based upon this study, GBE shall, if necessary, establish a decommissioning fund in an amount and at a time reasonably necessary to perform the wind-up activities

described below, at GBE's sole cost and expense. In any circumstance in which the Project is retired from service, GBE shall promptly perform the following wind-up activities: (i) dismantling, demolishing and removing all equipment, facilities and structures; (ii) terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located; (iii) securing, maintaining and disposing of debris with respect to the Project facilities; and (iv) performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the project facilities and restore any landowner property. The decommissioning fund may take the form of a letter of credit, insurance, cash, surety bond, other acceptable credit support, or any combination thereof.

- c. Invenergy Transmission must commit to recovering the cost of the GBE Project through the rate authority granted to GBE by the Federal Energy Regulatory Commission ("FERC") to negotiate transmission service agreements for transmission capacity with its customers. If GBE seeks any alternative cost-recovery methodology affecting Kansas ratepayers, such as cost recovery through a Southwest Power Pool ("SPP") Open Access Transmission Tariff ("OATT"), GBE would be required to file an Application with the Commission to amend its Certificate, including supporting evidence that such an amendment is in accordance with applicable public convenience standards. Unless and until the Commission issues an Order approving a change in cost-recovery plan, GBE commits to not recover the transmission project's costs through the SPP cost allocation process or from Kansas ratepayers. For the avoidance of doubt, this Paragraph 9.c does not apply to de minimis costs ancillary to

any needed interconnection to SPP, consistent with Paragraph 4.c. of the Stipulation and Agreement in Docket No. 11-GBEE-624-COC.

d. In furtherance of the Stipulation and Agreement in 11-GBEE-624-COC, Invenergy Transmission and GBE agree that the FERC preempts the KCC unless Invenergy Transmission or GBE acts outside the conduct covered by FERC jurisdiction, at which time the KCC will determine the applicability of K.S.A. 66-1403. The KCC has granted a waiver of K.S.A. 66-1402, which is effective only as long as GBE continues to use a cost recovery mechanism that does not recover costs through SPP, other than de minimis costs ancillary to any needed interconnection to SPP, consistent with Paragraph 4.c. of the Stipulation and Agreement in Docket No. 11-GBEE-624-COC.

e. Staff and GBE shall use all reasonable efforts to replace the Sunset Term established in Docket No. 13-GBEE-803-MIS with the following provisions:

i. By December 2, 2024, GBE shall have either (i) obtained executed easement agreements, demonstrably commenced negotiations to obtain easements, or instituted proceedings in state district court to obtain easements, or any combination thereof, for at least **REDACTED** of the total number of easements required to construct the Kansas portion of the Project; or (ii) satisfied the Financing Requirement as defined in Paragraph 9.a. hereof. If unable to meet the requirements of the preceding sentence, GBE shall either, at GBE's election: (a) commit to **REDACTED**;¹ or (b) file for an updated transmission line siting permit under K.S.A. 66-1,178.

¹ **

ii. Unless GBE has elected to proceed with an updated transmission line siting permit under K.S.A. 66-1,178 in subsection (b) in the preceding paragraph, by December 2, 2026, GBE shall have either (i) obtained executed easement agreements, demonstrably commenced negotiations to obtain easements, or instituted proceedings in state district court to obtain easements, or any combination thereof, for at least **REDACTED** of the total number of easements required to construct the Kansas portion of the Project; or (ii) satisfied the Financing Requirement. If unable to meet the requirements of the preceding sentence, GBE shall either, at GBE's election: (a) commit to **REDACTED**²; or (b) file for an updated transmission line siting permit under K.S.A. 66-1,178.

iii. Unless GBE has elected to proceed with an updated transmission line siting permit under K.S.A. 66-1,178 in subsection (b) of the preceding paragraph, if by December 2, 2028, the Financing Requirement has not been satisfied or if at least **REDACTED** of the total number of easements has not been executed, then GBE agrees to either: (a) file for an updated transmission line siting permit under K.S.A. 66-1,178; or (b) abandon the Project and allow all easements to revert to the landowners.

f. In its quarterly reports to the Commission, in addition to the information already required, GBE shall provide: (i) the number of Kansas easements obtained; (ii)

REDACTED

**

² **

REDACTED

**

1 significant Kansas landowner contacts; (iii) significant outreach events in Kansas; and
2 (iv) significant communications sent to Kansas landowners. Such reports shall
3 continue to be considered confidential; however a public version of the report shall be
4 filed in the compliance docket.

5 g. When the GBE Project and/or AC Collector System become operational, GBE will
6 maintain sufficient personnel (employees or local contractors) in the region of the
7 facilities such that it can provide adequate emergency response to any portion of its
8 Kansas operations in accordance with good utility practices. Good utility practices
9 include:

10 i. When the GBE Project and/or AC Collector System become operational, GBE
11 shall contact, on an annual basis, the emergency management coordinators for
12 each county through which the GBE Project and/or AC Collector System
13 passes to explain what is expected of county first responders in the event of an
14 emergency involving a GBE Project facility.

15 ii. When the GBE Project and/or AC Collector System become operational, GBE
16 shall compile and maintain on an annual basis, a contact list for all utilities
17 crossed by the GBE Project or AC Collector System.

18 iii. When the GBE Project and/or AC Collector System become operational, GBE
19 shall review all regional options to establish maintenance agreements or
20 participate in mutual aid programs, and where possible based on GBE's status
21 and resources, engage with local transmission operators or electrical
22 contractors to provide reciprocal assistance in emergency conditions.

23 **Q. What are the standards by which the Commission assesses Settlement Agreements?**

1 A. Although I am not an attorney, it is my understanding, based on advice from counsel, that
2 the Commission's Order in Docket No. 08-ATMG-280-RTS discusses five factors or
3 standards to be used in evaluating settlement agreements, and multiple agreements have
4 been reviewed by the Commission using the five factors since that Order.³ However,
5 more recently, I have been advised that the Commission has affirmed that parties
6 supporting a unanimous settlement agreement only need to provide support that the
7 agreement meets three standards to support approval.⁴ These three standards are as
8 follows, and I will discuss how the current Settlement Agreement meets these standards a
9 bit later in my testimony:

- 10 • Whether the Settlement Agreement is supported by substantial competent evidence in
11 the record as a whole;
- 12 • Whether the Settlement Agreement results in just and reasonable rates; and
- 13 • Whether the results of the Settlement Agreement are in the public interest, including
14 the interest of customers represented by the parties not consenting to the Agreement.

15 **II. Discussion of the Kansas Merger Standards**

16 **Q. Are you familiar with the Kansas Merger Standards that the Commission uses in its**
17 **evaluation of proposed merger applications?**

18 A. Yes. As discussed in my Direct Testimony filed in this proceeding, it is my understanding
19 that, in its review of merger applications, the Commission has traditionally applied the
20 following eight standards and their respective subparts:

- 21 (a) The effect of the transaction on consumers, including:

³ Order Approving Contested Settlement Agreement, p. 5, Docket No. 08-ATMG-280-RTS (May 12, 2008).

⁴ Order on KCP&L's Application for Rate Change, p. 6, Docket No. 15-KCPE-116-RTS (Sept. 10, 2015).

- (i) The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur;
- (ii) Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range;
- (iii) Whether ratepayer benefits resulting from the transaction can be quantified;
- (iv) Whether there are operational synergies that justify payment of a premium in excess of book value;
- (v) The effect of the proposed transaction on the existing competition.
- (b) The effect of the transaction on the environment.
- (c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.
- (d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility regulations in the state.
- (e) The effect of the transaction on affected public utility shareholders.
- (f) Whether the transaction maximizes the use of Kansas energy resources.
- (g) Whether the transaction will reduce the possibility of economic waste.
- (h) What impact, if any, the transaction has on the public safety.

Q. Is it your belief that the Settlement Agreement meets both the Merger Standards and the Commission's standards for evaluating Settlement Agreements?

A. Yes. Because meeting the Merger Standards help inform the conclusion that the proposed Transaction is in the public interest, I will briefly touch upon how the proposed Transaction meets the Merger Standards, followed by a discussion regarding how the

1 Settlement Agreement meets the Commission's settlement standards. My Direct
2 Testimony regarding the Merger Standards is still accurate and I will address how the
3 terms of the Settlement Agreement further enhance the proposed Transaction's
4 satisfaction of the Merger Standards.

5 **Q. Please describe how Paragraph (a) of the settlement conditions satisfies the Merger**
6 **Standards.**

7 A. Paragraph (a) of the settlement conditions enhance satisfaction of Merger Standards (a)(i)
8 and (d) by ensuring that GBE has obtained financing commitments for the entire cost to
9 build the multi-state transmission project prior to installing transmission facilities on
10 easement property in Kansas, thereby preserving the financial integrity of the Project. To
11 preserve the Commission's jurisdiction and its capacity to regulate GBE as a public
12 utility, paragraph (a) of the settlement conditions contains specific reporting
13 requirements.

14 **Q. Please describe how Paragraph (b) of the settlement conditions satisfies the Merger**
15 **Standards.**

16 A. Paragraph (b) of the settlement conditions require GBE, within ten years following the
17 Commercial Operation Date, to undertake, or engage a third-party to undertake, a study
18 to quantify the estimated decommissioning costs of the project. Paragraph (b) supports
19 Merger Standard (d) by preserving the jurisdiction of the Commission and its ability to
20 regulate GBE as a public utility, and further supports Merger Standard (g) by supporting
21 reduction of economic waste.

22 **Q. Please describe how Paragraph (c) of the settlement conditions satisfies the Merger**
23 **Standards.**

1 A. Paragraph (c) of the settlement conditions requires Invenergy Transmission to commit to
2 recovering the costs of the GBE Project through the rate authority granted to GBE by
3 FERC to negotiate transmission service agreements for transmission capacity with its
4 customers. Paragraph (c) further requires GBE to file an application with the KCC to
5 amend its certificate if it intends to seek any alternative cost-recovery mechanism that
6 would affect Kansas ratepayers, such as cost recovery through an SPP OATT. This
7 settlement condition ensures that Kansas ratepayers will not experience any detriment as
8 a result of the Transaction, which pertains to Merger Standard (a)(iii)—“whether
9 ratepayer benefits resulting from the transaction can be quantified.” Although Paragraph
10 (c) of the settlement conditions does not specifically quantify ratepayer benefits, it
11 ensures that ratepayers will be insulated from any potential detriment. Again, GBE does
12 not have retail ratepayers. Instead, GBE only has wholesale customers and FERC will
13 retain exclusive jurisdiction over the rates GBE may charge for use of the Project.
14 Nevertheless, this condition operates to protect Kansas consumers by ensuring the current
15 rate authority is not altered without KCC approval. By reinforcing the KCC’s authority
16 over any potential future changes in cost recovery, this condition also enhances the
17 Transaction’s satisfaction of Merger Standard (d).

18 **Q. Please describe how Paragraph (d) of the settlement conditions satisfies the Merger**
19 **Standards.**

20 A. Paragraph (d) similarly satisfies Merger Standards (a)(iii) and (d) by reinforcing the lack
21 of cost recovery from Kansas ratepayers and ensuring that the KCC can assert
22 jurisdiction if GBE’s current rate authority is altered. Paragraph (d) acknowledges the
23 current inapplicability of K.S.A. 66-1403 and the waiver of K.S.A. 66-1402, which is

1 consistent with the Stipulation and Agreement in Docket No. 11-GBEE-624-COC.
2 However, if GBE acts outside the conduct covered by FERC jurisdiction, the KCC has
3 the authority to determine the applicability of K.S.A. 66-1403. Additionally, the KCC
4 has granted a waiver of K.S.A. 66-1402, which is effective only as long as GBE
5 continues to use a cost recovery mechanism that does not recover costs through SPP,
6 other than de minimis costs ancillary to any needed interconnection to SPP.

7 **Q. Please continue with a discussion of Paragraph (e) of the settlement conditions.**

8 A. Paragraph (e) arguably does not fit neatly within the Merger Standards. Rather,
9 conditions (e) and (f) arise due to concerns raised in Docket No. 13-GBEE-803-MIS (the
10 “Siting Docket”) pertaining to the Sunset Term applicable to the GBE Project and the
11 desire for more landowner certainty. Paragraph (e) provides that Staff and GBE will use
12 all reasonable efforts to replace the Sunset Term established in the Siting Docket with
13 more specific provisions that require GBE to proceed expeditiously to advance
14 development of the Project. The Siting Docket is currently stayed, pending the outcome
15 of this proceeding and the Signatories have agreed to propose the condition discussed in
16 Paragraph (e) in the Siting Docket once the stay is lifted.

17 **Q. How does Paragraph (f) of the settlement conditions satisfy the Merger Standards?**

18 A. Paragraph (f) enhances the quarterly reporting requirements and therefore enhances the
19 Transaction’s satisfaction of Merger Standard (d) by preserving the Commission’s
20 jurisdiction. Additionally, paragraph (f) addresses the landowner certainty issues raised
21 in the Siting Docket, in Staff’s testimony in this case, and discussed above.

22 **Q. Please describe how Paragraph (g) of the settlement conditions satisfies the Merger**
23 **Standards.**

1 A. Paragraph (g) of the settlement conditions is directly related to Merger Standard (h)—
2 “what impact, if any, the transaction has on the public safety.” Settlement condition (g)
3 requires GBE to maintain sufficient personnel within the region of the facilities such that
4 it can provide adequate emergency response to any portion of the Kansas operations in
5 accordance with good utility practice. This condition contains specific annual
6 requirements regarding contacts with county emergency management coordinators,
7 contacts with each utility crossed by the GBE Project or AC Collector System,⁵ and other
8 coordinated activities to provide reciprocal assistance, where possible, in emergency
9 situations.

10 **III. Discussion of Settlement Standards**

11 *The Settlement Agreement Is Supported By Substantial Competent Evidence in the Record*
12 *as a Whole*

13 **Q. Is it your opinion that the Settlement Agreement is supported by substantial**
14 **competent evidence in the record as a whole?**

15 A. Yes. The Settlement Agreement is supported by substantial competent evidence in the
16 record as a whole, which includes Joint Applicants’ Application and supporting testimony
17 filed December 28, 2018, Direct Testimony filed by Staff witnesses Leo Haynos and
18 Chad Unrein on March 26, 2019, and Rebuttal Testimony filed by Joint Applicant
19 witnesses Kris Zadlo and Andrea Hoffman on April 15, 2019. All parties to the
20 settlement engaged in a lengthy discovery process to further evaluate Joint Applicants’
21 proposed Transaction and this discovery formed the basis of their respective positions.
22 As such, this record of evidence includes testimony and detailed analysis prepared by

⁵ The term “AC Collector System” refers to alternating current gathering lines needed to connect generators in western Kansas to the Project. Stipulation and Agreement, ¶ 4.b, Docket No. 11-GBEE-624-COC (October 10, 2011).

1 corporate officers, engineers, and financial experts. Each of the parties is represented by
2 counsel who actively guided the negotiation process and diligently represented their
3 client's interests.

4 *The Settlement Agreement Will Not Directly Impact Rates*

5 **Q. Will the Settlement Agreement result in just and reasonable rates?**

6 A. As noted above, GBE does not have and does not seek retail ratepayers in Kansas.
7 Instead, GBE only has wholesale customers and FERC will retain exclusive jurisdiction
8 over the rates GBE may charge for use of the Project. Further, pursuant to Paragraph (c)
9 of the conditions, as discussed above, Invenergy Transmission has committed to
10 recovering the cost of the GBE Project through the rate authority granted to GBE by
11 FERC. If GBE seeks any alternative cost-recovery methodology affecting Kansas
12 ratepayers, such as cost recovery through an SPP OATT, GBE is required to file an
13 Application with the Commission to amend its Certificate, including supporting evidence
14 that such an amendment is in accordance with applicable public convenience standards.
15 Unless and until the Commission issues an Order approving a change in cost-recovery
16 plan, GBE has committed to not recover the transmission project's costs through the SPP
17 cost allocation process or from Kansas ratepayers.

18 *The Results of the Settlement Agreement Are in the Public Interest*

19 **Q. Is it your opinion that the results of the Settlement Agreement are in the public**
20 **interest?**

21 A. Yes, for several reasons. First, the parties to this Docket represent varied and conflicting
22 interests. The fact that these varied interests were able to collaborate and reach a
23 unanimous settlement is one indication that the public interest standard has been met. In

1 settlement negotiations, each of the parties represented their respective interests by
2 putting time, thought, and analysis into deriving a settlement position that they each find
3 reasonable. The collaborative product is the result of compromise by each of the parties.
4 Second, the Settlement Agreement relies on and is wholly consistent with the Merger
5 Standards formulated by the Commission over the past 25 years. Both Joint Applicants'
6 and Staff's direct testimony addressed the Merger Standards in detail, and, where the
7 parties' differed as to whether the proposed Transaction met the Merger Standards,
8 conditions were negotiated to ensure that such standards were met to the satisfaction of
9 all parties. Third, this Commission has already found that the GBE Project is in the
10 public interest by citing to the numerous benefits of the Project and the proposed
11 Transaction brings the GBE Project closer to reality.⁶ The proposed Transaction does not
12 substantially alter any of the previously approved aspects of the Project. Meanwhile,
13 Invenenergy has an established record of developing, financing, constructing, and operating
14 large-scale energy projects and will bring that experience to bear on the GBE Project.
15 Finally, if the Settlement agreement is approved by the Commission, then the parties will
16 avoid the costly and time-consuming process of a fully-litigated evidentiary hearing
17 before the Commission, thereby conserving administrative resources. A less costly path
18 forward is in the interests of all parties and is therefore in the public interest.

19 **Q. Should the Commission accept the Settlement Agreement as a reasonable resolution**
20 **of the issues in this proceeding?**

⁶ See 13-803 Order at ¶ 57; Order Approving Stipulation & Agreement And Granting Certificate, ¶¶ 63-67, Docket No. 11-GBEE-624-COC (Dec. 7, 2011).

PUBLIC VERSION

1 A. Yes, the Settlement Agreement represents a reasonable resolution of the issues in this
2 proceeding, is in the public interest, and is supported by substantial competent evidence
3 in the record as a whole.

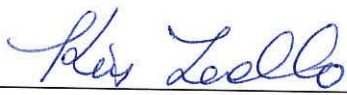
4 **Q. Does this conclude your testimony?**

5 A. Yes.


VERIFICATION

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Kris Zadlo, being duly sworn, on oath state that I am the Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenenergy LLC, that I have read the foregoing testimony and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

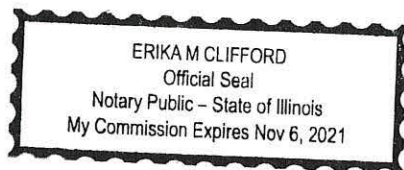
By: 
Kris Zadlo

The foregoing pleading was subscribed and sworn to before me this May 1, 2019.


Notary Public

My Commission Expires:

NOV. 6th 2021



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been emailed this 1st day of May 2019, to:

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